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6 THE HONORABLE RONALD B. LEIGHTON
7 UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON

8 SERAFIN BLANCAFLOR and EMIE
9 BLANCAFLOR, husband and wife,

10 Plaintiffs,

11 v.

12 HOME DEPOT U.S.A., INC., a Delaware
13 corporation doing business in the State of
Washington,

14 Defendant.

NO. 3:05-CV-05620-RBL

MOTION AND DECLARATION FOR
VOLUNTARY DISMISSAL WITHOUT
PREJUDICE AND WITHOUT COSTS

15 **RELIEF REQUESTED**

16 COME NOW the PlaintiffS, SERAFIN BLANCAFLOR and EMIE
17 BLANCAFLOR, by and through their attorney J. Michael Koch, and respectfully
18 requests this Court for an Order of Voluntary Dismissal without Prejudice and without
19 Costs under Federal Rules of Civil Procedure 41(a)(2).

20 **STATEMENT OF FACTS AND
21 DECLARATION OF HEATHER E. FORRLER**

22 I, Heather E. Forrlер, declare as follows:

23 I am an attorney representing Mr. and Mrs. Blancaflor in the above-captioned
24 matter, I am over the age of eighteen years, and am competent to testify to the matters
25 herein.

26 MOTION AND DECLARATION FOR VOLUNTARY
27 DISMISSAL WITHOUT PREJUDICE AND WITHOUT
COSTS

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1 During the discovery phase of the above-captioned matter, some necessary
2 information to the litigation of the above-caption matter has not been obtained by within
3 reasonable time periods for proper disclosure; and

4 Through discovery, Plaintiffs have determined that multiple other entities may be
5 responsible for the conditions of the subject area of the Home Depot premises and thus
6 should be named defendants in the above-captioned matter.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

9 DATED this 27th day of June, 2006, at Silverdale, Washington.

AUTHORITY

Federal Rule of Civil Procedure 41(a)(2) states that the Court may grant a dismissal at Plaintiff's request upon the terms and conditions the Court deems proper. Because Plaintiffs are unable to obtain necessary documents to provide through discovery and for use in settlement negotiations and/or trial, both parties are disadvantaged and unable to meet deadlines set forth by the Court. Because Plaintiffs have discovered that entities other than Defendant were responsible for the area that is

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1 the subject of the above-captioned matter during various periods prior to the June 11,
2 2005, incident, some of which may have been responsible for the condition of the subject
3 area on June 11, 2005, additional parties should be named as defendants in this matter.
4 Some of the other entities are "residents" of the State of Washington. By adding such
5 defendants, this Court would not longer have jurisdiction by diversity.

6

7 **CONCLUSION**

8 By granting voluntary dismissal without prejudice, Plaintiffs may re-file the cause
9 in State Court, name all the proper parties, and have substantially more time for the
10 discovery process, benefitting all parties.

11

12 **PROPOSED ORDER**

13 A proposed Order is filed herewith.

14

15 DATED this 27th day of June, 2006, at Silverdale, Washington.

16

17

18 /s/ Heather E. Forrler
19 J. Michael Koch, WSBA #4249
Heather E. Forrler, WSBA # 32744
J. Michael Koch and Associates, P.S., INC

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